

Appeal from decision of Montana State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application M-49920.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings

Failure to make timely payment of first year's rental for oil and gas lease is not excused where lease rental notice sent to applicant was returned marked "unclaimed" by Postal Service.

APPEARANCES: Jim Ragain, Esq., for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

On October 7, 1981, the Montana State Office, Bureau of Land Management (BLM), rejected appellant Ann C. Rehrig's application M-49920 which was the first drawn simultaneous oil and gas lease application for parcel MT 47 in the 1981 Montana drawing. Appellant's application was rejected pursuant to 43 CFR 3112.6-1 for failure to timely file an offer to lease and to submit the first year's rental for the parcel drawn. From the October 7, 1981, decision rejecting application this appeal was timely taken.

Both in her statement of reasons for appeal, and brief in support of appeal, appellant argues that her failure to file her offer to lease and payment of rental within the time allowed by regulation 43 CFR 3112.4-1(a) should be excused under the circumstances of this case because she was prevented from making a timely filing by the manner in which the postal service handled her mail from BLM announcing her success at the 1981 drawing.

In her brief, which is accepted to be an accurate representation of the facts as known to appellant, she summarizes the situation thus:

Mrs. Rehrig properly filed application M 49920, stating "2208 Elizabeth, Billings, Montana" thereon as her current address, as this was in fact the address of Mr. and Mrs. Rehrig's residence at the time the applications were filed for January 1981 drawing. Subsequent to filing application M 49920 the Rehrgs moved to 4924 Rimrock Road, Billings, Montana. The

Rehrigs, at the time of the move, filed the necessary documents with the Post Office in Billings to have their mail forwarded to the new address.

On or about October 7, 1981, Mrs. Rehrig received the rejection decision from the Billings Bureau of Land Management Office. The decision was the first notice Mrs. Rehrig had that she had won Parcel MT 47. The decision stated that a notice was sent to 2208 Elizabeth, Billings, Montana requesting payment of first year's rental and an offer to lease. The decision stated further that said notice was forwarded to 4924 Rimrock Road, Billings, Montana by the Post Office; that delivery was attempted on the 20th and 25th of July, and that envelope containing the notice was returned "unclaimed" to the Bureau of Land Management on August 6, 1981. These statements notwithstanding, the fact is that Mrs. Rehrig was never made aware of any attempted delivery of the notice presumably mailed by the Bureau of Land Management. In addition, no one else residing at Mrs. Rehrig's address was ever made aware of any attempted delivery. The Rehrigs did receive a Post Office claim concerning the attempted delivery of a notice that they had won one of the other parcels in the January 1981 drawing. This claim check was presented to the Post Office, the notice was received, and the Rehrigs made the offer to lease. However, no claim checks showing the attempted delivery of a notice concerning application M 49920 received by, or given to, any member of the Rehrig household.

[1] Similar situations have been considered many times by this Board. See Mar-Win Development Co., 20 IBLA 383, 386 (1975), and cases cited. Even if the postal delay or misdelivery was the result of negligence, postal error cannot be relied upon to excuse late payment of the initial lease rental due, under the holding in Mar-Win, *supra*. Although appellant seeks to find a basis for relief in the postal regulations by pointing out distinctions between "undeliverable" and "unclaimed" mail, as relates to the delivery in her case, which is characterized as "unclaimed," her reliance upon the postal regulations is misplaced. As pointed out by the opinion in Robert D. Nininger, 16 IBLA 200, 202 (1974), *aff'd*, Nininger v. Morton, Civ. No. 74-1246 (D.D.C. Mar. 25, 1975), the rigorous enforcement of the regulation requiring timely payment of the first rental following drawing arises from administrative necessity. 1/ A further consideration derives from the circumstance that, in the event the first drawn application is not timely pursued, the rights

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1/ See Edgar C. Bennington, 28 IBLA 355, 357 (1977). Appellant incorrectly seeks to find in the provisions of 43 CFR 1810.2(b) a requirement that actual notice of drawing results must be given to an applicant before an application may be rejected. The rule which appears at 43 CFR 1821.2-2(g), quite clearly, is that Departmental regulations do not permit the consideration of excuses for failure to remit payment:

"When the regulations of this chapter provide that a document must be filed or a payment made within a specified period of time, the filing of the document or the making of the payment after the expiration of that period will not prevent the authorized officer from considering the document as being

of third parties intervene and the next drawn acceptable application becomes qualified to receive the lease. John Paul Pratt, 24 IBLA 110, 111 (1976). 2/ Compare with Warren R. Haas, 66 IBLA 107 (1982). Under the factual circumstances described by appellant, the decision rejecting the late filed payment and offer to lease was correct. Dawson v. Andrus, 612 F.2d 1280, 1283 (9th Cir. 1980).

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed is affirmed.

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Franklin D. Arness  
Administrative Judge  
Alternate Member

We concur:

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Edward W. Stuebing  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

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fn. 1 (continued)

timely filed or the payment as being timely made except where:

"(1) The law does not permit him to do so.

"(2) The rights of a third party or parties have intervened.

"(3) The authorized officer determines that further consideration of the document or acceptance of the payment would unduly interfere with the orderly conduct of business."

(But see Joan L. Harris, 37 IBLA 96 (1978), citing Jack R. Coombs, 28 IBLA 53 (1976), as authority for the proposition that BLM may be bound by provisions of 43 CFR 1810.2(b) where Postal Service neglect prevents notice to a successful applicant of a simultaneous oil and gas lease application. In Harris, this Board remanded for further agency action where actual violation of Postal Service regulations was proved. In this case, however, there is no showing that postal regulations were violated by a return showing the BLM notice was "unclaimed." The Coombs decision did not involve a simultaneous oil and gas lease situation. The rights of the second applicant at a drawing were not, therefore, involved in Coombs.)

2/ Arguments similar to those raised by appellant were considered and rejected by this Board in Duncan Miller, 17 IBLA 267 (1974) where the Board held the late filing of payment to result in an automatic disqualification despite claimed Postal Service error.